

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding  
Broadband Infrastructure Deployment and to  
Support Service Providers in the State of  
California.

Rulemaking 20-09-001

**COMMENTS OF THE  
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION**

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JACQUELINE R. KINNEY  
CALIFORNIA CABLE &  
TELECOMMUNICATIONS ASSOCIATION  
925 L STREET, SUITE 850  
SACRAMENTO, CA. 95814  
TEL: 916/701-5580  
FAX: 916/446-1605  
EMAIL: [JKINNEY@CALCABLE.ORG](mailto:JKINNEY@CALCABLE.ORG)

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The California Cable and Telecommunications Association (“CCTA”)<sup>1</sup> submits these comments to the California Public Utilities Commission (“Commission”) in response to the *Administrative Law Judge’s Ruling* dated September 9, 2021 (“Ruling”) soliciting further comments on both issues raised in parties’ prior comments and other items identified in the governing statute.

**I. INTRODUCTION**

CCTA is actively engaged with the multiple entities charged with ensuring that Senate Bill (“SB”) 156<sup>2</sup> achieves its intended purpose: bringing broadband service to the unserved. Fundamental to the success of SB 156, including the \$3.25 billion investment in a statewide middle-mile network (“Middle-Mile Network”), is diligently following the “worst first” strategy that requires first allocating funding for both middle-mile and last-mile infrastructure in areas of California that have no broadband service or very slow service.<sup>3</sup> CCTA continues to urge the

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<sup>1</sup> CCTA is a trade association consisting of cable providers that have collectively invested more than \$40 billion in California’s broadband infrastructure since 1996 with systems that pass approximately 96 percent of California’s homes.

<sup>2</sup> SB 156 (Ch. 112, Stats of 2021), which took effect on July 20, 2021 as an urgency measure.

<sup>3</sup> See statement of Senator Mike McGuire articulating “worst first” strategy in SB 156, recording of August 18, 2021, meeting of Middle-Mile Advisory Committee, at 1:02, available at [Middle-Mile Past Meeting Resources | CDT \(ca.gov\)](#).

Commission to follow this “worst first” strategy, consistent with the specific directives in SB 156, when identifying locations for the Middle-Mile Network in the staff report to be provided to the newly created Office of Broadband and Digital Literacy (“Office”). If the State were not to follow this approach and instead were to duplicate infrastructure in highly connected urban areas, funding could be depleted and federal expenditure deadlines may expire before infrastructure is deployed to connect California’s hardest-to-reach unserved communities.

As set forth in the responses below to questions posed in the Ruling, CCTA urges alignment with SB 156 and the grant of broad authority to the Office on issues relating to the operation of the Middle-Mile Network. In addition, CCTA recognizes that lessons can be learned from the challenges faced by other publicly funded open access middle-mile networks in California as well as other states – namely that cost overruns and unexpected delays are highly likely. Therefore, to ensure success of the “worst first” strategy, California’s hardest-to-reach unserved communities must be prioritized rather than seeking to spread the \$3.25 billion to too many potential Middle-Mile Network locations.

## **II. RESPONSES TO QUESTIONS IN THE RULING.**

### **A. Question 1: Open-Access**

- *Question 1: As described in more detail in the Order Instituting Rulemaking that initiated this proceeding, the Commission has regulatory authority [over] telecommunications service providers.*
- *How can the Commission use its regulatory authority to assure durable and enforceable open-access and affordability requirements in perpetuity?*

**Regulatory Authority.** The Middle Mile Network is expressly authorized to be under the authority of the Office within the California Department of Technology (“CDT”). SB 156 requires the Office to oversee the acquisition and management of contracts “for the development, construction, maintenance, and **operation** of “a statewide open-access middle-mile broadband

network”<sup>4</sup> and grants the Office comprehensive power over all aspects of the Middle-Mile Network.<sup>5</sup> SB 156 directs the Office to retain a third-party administrator (“TPA”) “to manage the development, acquisition, construction, maintenance, and *operation*” of the Middle-Mile Network.<sup>6</sup>

Separately, SB 156 requires the Commission to provide the Office a staff report with proposed locations for the Middle-Mile Network and to prioritize locations “that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream.”<sup>7</sup> As the Office and TPA move forward in establishing and managing the Middle-Mile Network, SB 156 contemplates no enforcement role for the Commission related to the Middle-Mile Network nor provides for the Commission to exercise “regulatory authority” over the Office or CDT, an executive branch state agency. SB 156 provides that CDT has ultimate oversight of the Middle-Mile Network, with the Deputy Director for Broadband appointed by the Governor as the lead official.<sup>8</sup>

**Open Access and Affordability.** Additionally, SB 156 contemplates no role for the Commission in “assuring” open access and affordability requirements because those issues are to be addressed by the Office and TPA. By definition, the Middle-Mile Network authorized by SB 156 must be open access.<sup>9</sup> The Office and the TPA are required by the statute to operate an

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<sup>4</sup> Government Code Section 11549.52(a) (emphasis added). All further section references are to the Government Code unless otherwise indicated.

<sup>5</sup> Section 11549.53(a). The TPA is CENIC.

<sup>6</sup> Section 11549.53(b)(1).

<sup>7</sup> Section 11549.54(d).

<sup>8</sup> Section 11549.58(a) and (b).

<sup>9</sup> Section 11549.50(e) defines open access as meaning “equal non-discriminatory access to eligible entities on a technology and competitively neutral basis, regardless of whether the entity is privately or publicly owned.”

“open access” network.<sup>10</sup> As to affordability, the Office and the TPA are tasked with designing, constructing, and operating the Middle-Mile Network and, in doing so, must offer non-discriminatory pricing to those providers seeking to access the network.

By referencing “in perpetuity,” Question 1 appears to indicate that requirements related to the Middle Mile Network must be in place forever. Because it is plausible, however, that parts of the network could be sold to another party after 20 years,<sup>11</sup> seeking to impose terms in perpetuity is not consistent with the statute.

**Service Providers.** To the extent Question 1 contemplates enforcing any obligations on providers that seek to interconnect with the Middle-Mile Network, the Legislature granted this authority to the Office and the TPA. In addition to Sections 11549.52 and 11549.53 (referenced above) granting broad authority to the Office and the TPA over all aspects of the Middle-Mile Network, Section 11549.57 sets forth more detailed provisions authorizing the Office to establish reasonable user policies, network management practices, and related standards and policies that would apply to users of the network.<sup>12</sup> Indeed, Section 11549.56(b) demonstrates that the Office is vested with authority to adopt rules that impose requirements on internet service providers (“ISPs”) that use the Middle-Mile Network.<sup>13</sup> No similar authority is granted to the Commission.

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<sup>10</sup> Section 11549.52.

<sup>11</sup> See SB 156, Sec. 1 (“It is the intent of the Legislature that any state-owned assets constructed for the purposes of this bill shall not be sold to any other party for at least 20 years after the completion of construction.”).

<sup>12</sup> Section 11549.57.

<sup>13</sup> Section 11549.56(b): “The office shall consider adopting rules to encourage or require internet services providers that use the statewide open-access middle-mile broadband network to participate in the lifeline program pursuant to the Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code) and the federal lifeline program.” In contrast, Section 11549.56(a) expressly provides a role for other agencies including the CPUC with respect to permitting: “(a) All state agencies shall work in cooperation to expedite the

- *Question 1 (continued): should the Commission adopt a tariffing requirement for open-access networks?*

As discussed above, the Middle-Mile Network will be planned, constructed, maintained, and operated by the Office and the TPA. Only the Office has statutory authority to impose conditions on those entities that connect to the Middle Mile Network. If the Commission is soliciting comments on how the Office or the TPA will list and make the Middle Mile Network services available, SB 156 contemplates no role for the Commission in that effort. Instead, SB 156 expressly charges *the Office* with ensuring “that there are a variety of services offered to internet service providers or other eligible entities” using the Middle-Mile Network.<sup>14</sup> Because the Office also has been granted the authority to “establish reasonable user policies, perform reasonable network management practices, and create related standards and policies”<sup>15</sup> there is no need, or authority, for the Commission to adopt a tariffing requirement for the Middle-Mile Network.

- *Question 1 (continued): In October 2020, the Federal Communications Commission (FCC) eliminated a number of network unbundling and resale requirements placed on Incumbent Local Exchange Carriers, including requirements for DS1 and DS3 loops, and dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks. (See In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services, WC Docket No. 19-308, FCC 20-152) How will this impact Competitive Local Exchange Carriers in California that currently utilize these services to provide telecommunications services, including last-mile broadband Internet access service?*

CCTA has no comment on this topic at this time.

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delivery and permitting of the statewide open-access middle-mile broadband network.” An enforcement role for the CPUC cannot be read into SB 156 where the Legislature did not grant one.

<sup>14</sup> Section 11549.57(b).

<sup>15</sup> Section 11549.57(a).

## B. Question 2: Additional Factors to Consider

- *Question 2: What additional criteria should the Staff Report take into consideration and to what extent, including, but not limited to:*
  - *Affordability;*
  - *Redlining;*
  - *Route redundancy;*
  - *Competition;*
  - *Hardening, undergrounding, deployment in high fire threat areas;*
  - *Cell coverage; and*
  - *Labor and economic development benefits.*

Section 11549.54 requires the Commission to prepare the staff report with specific direction to prioritize the universe of potential Middle-Mile Network locations consistent with the “worst first” strategy to ensure that the \$3.25 billion is targeted to bring broadband first to the hardest-to-reach unserved California households. Section 11549.54 does not require or authorize the Commission to consider “additional criteria” outside these statutory directives when preparing the staff report. Instead, SB 156 sets forth the following steps for identifying and prioritizing recommended locations for the Middle-Mile Network in the staff report:

- **Identify Locations That Enable Last-Mile Connections:** The Commission is required to identify potential Middle-Mile Network locations “that will enable last-mile service connections.”<sup>16</sup>
- **Prioritize Locations to Connect Unserved Residences:** The Commission is required to “prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream.”<sup>17</sup>
- **Prioritize Locations without Middle-Mile Access:** After first defining and prioritizing this universe of unserved locations, the Commission can further identify priority unserved last-mile locations in areas that also lack *any* existing middle-mile facilities. This is reflected in the directive that the Commission identify locations in “areas with no known middle-mile network access” and “regions underserved by middle-mile networks.”<sup>18</sup>

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<sup>16</sup> Section 11549.54(b).

<sup>17</sup> Section 11549.54(d). This subdivision, in addition to requiring the Commission to identify locations with unserved households, also allows, but does not require, identification of locations with specified anchor institutions “that lack sufficient high-bandwidth connections.”

<sup>18</sup> Section 11549.54(c). In addition, Section 11549.54 requires the Commission to solicit comments on, among other topics, “availability . . . of commercial sources of supply of middle-mile broadband network



- **Prioritize Locations in Highway Right-of-Way:** Among the prioritized locations described above, the Commission should prioritize where segments of the Middle-Mile Network could be deployed in state highway rights-of-way.<sup>19</sup> However, this prioritization of highway rights-of-way is not expressly required to be part of the Commission’s staff report.<sup>20</sup>

### C. Question 3: Middle-Mile Network Services for ISPs

- *Question 3: The statute mandates that the State of California take into consideration various aspects that will increase the attractiveness and usefulness of the statewide open-access middle-mile broadband network for commercial internet service providers.*
  - *What specific locations, routes, interconnection points, regeneration points, and tie-ins should the Commission consider in order to increase the attractiveness and usefulness of the statewide open-access middle-mile broadband network for commercial internet service providers?*
  - *How can existing interconnection points or the creation of new interconnection points improve access for communities?*
  - *What technical performance characteristics will increase the attractiveness and usefulness of the statewide open-access middle-mile broadband network for commercial internet service providers?*
  - *What network design and other design, technical, business, and operational considerations will increase the attractiveness and usefulness of the statewide open-access middle-mile broadband network for commercial Internet service providers?*
  - *What services should the network provide commercial providers (e.g., dark fiber, lit fiber, colocation, wireless backhaul, etc.)?*
  - *If the network offers dark fiber, how many strands of dark fiber should the network make available on each route? What should the lease terms be?*

There is no one-size-fits-all approach to network design and operation across a state as vast and diverse as California, particularly in the remote rural areas that remain unserved. The

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services.” Together, these provisions make clear a legislative intent to invest the \$3.25 billion in a Middle-Mile Network in areas where no middle-mile facilities already exist.

<sup>19</sup> Section 11549.54(e).

<sup>20</sup> Section 11549.54 (“The office shall plan and develop the statewide open-access middle-mile broadband network using the information provided pursuant to subdivisions (a) to (d), inclusive.”). Thus, the prioritization of highway routes is not essential for purposes of providing the Office a staff report recommending Middle-Mile Network locations.

answers to these questions should be tailored to the particular last-mile providers, customer base, and network usage corresponding to where Middle-Mile Network facilities are built. Moreover, CCTA supports the view expressed by CENIC:

The middle-mile network is required to be open access and is under the purview of the [CDT]. CDT, in collaboration with the third-party administrator, is well positioned to design and determine requirements for interconnection and interoperability as well as consult with the Commission.

...  
CENIC believes that these kinds of potentially complex design, operational, and inter-operational elements are ultimately best suited for network engineers and operators – and not for a public process despite the fact that public input is critically important in order to bring to light both public and private needs and concerns.<sup>21</sup>

CCTA recognizes that SB 156 requires the Commission to solicit comments on technical issues such as interconnection and network design, but, as CENIC correctly points out, the Middle Mile Network design and engineering will need to be tailored to each unserved community. As just one example, multiple interconnection points will not necessarily be relevant when building to a single remote community, whereas multiple interconnection points will be important when building in a geographic region with more than one remote community.

In addition, as discussed in response to Question 7, it is CCTA's view that the attractiveness and usefulness of the Middle-Mile Network to ISPs will be increased if the Office and TPA adopt standards for this network on par with standards applicable to other communications networks and providers.

**D. Question 4: Middle Mile Network Services for Consumers**

- *Question 4: The middle mile network must prioritize connections to anchor institutions that lack sufficient high-bandwidth connections. Should the statewide middle mile network provide direct service to anchor institutions?*

CCTA understands this question as stemming from subdivision (d) of Section 11549.54,

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<sup>21</sup> Reply Comments of CENIC (September 21, 2021) at 3 to 4.

which relates to the Commission’s duty to recommend potential Middle-Mile Network locations in a staff report and provides as follows:

(d) In identifying priority statewide open-access middle-mile broadband network locations pursuant to subdivision (c), the commission shall prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream. The *locations prioritized by the commission may also include* entities that lack sufficient high-bandwidth connections, including, but not limited to, all of the following:

- (1) Elementary and secondary schools.
- (2) Community colleges and other institutions of higher education.
- (3) Government entities.
- (4) Healthcare institutions.
- (5) Libraries.
- (6) Public safety answering points and technologies to assist in the prevention or response to natural disasters, including, but not limited to, fairgrounds.
- (7) Tribal lands. (emphasis added)

Thus, within the universe of the hardest-to-reach unserved locations that the Commission is required to identify in the staff report, these locations “may also include” anchor institutions “that lack sufficient high-bandwidth connections.” Thus, respectfully, SB 156 does not *require* the Commission to “prioritize connections to anchor institutions” as alluded to in this question. Indeed, as described above, the top priority in the “worst first” strategy codified in SB 156 is for the Commission staff report to identify Middle-Mile Network locations that will “enable last-mile connections to *residences* unserved by 25 mbps downstream and 3 mbps upstream.”<sup>22</sup>

Regarding use of the Middle-Mile Network to provide “direct service to anchor institutions,” \$3.25 billion allocated in the state budget for the Middle-Mile Network is for *middle-mile* broadband infrastructure, not the provision of last-mile service.<sup>23</sup> Moreover, existing state and federal programs are available to help pay for the cost of last-mile service for

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<sup>22</sup> Section 11549.54(d) (emphasis added).

<sup>23</sup> See Section 11549.52(a) and Section 11549.50(f) (authorizing use of funds from Item 7502-062-8506 of the Budget Act of 2021 for “broadband infrastructure” for a Middle-Mile Network).

many of the identified anchor institutions. These programs — which are funded by surcharges customers pay on their monthly phone bills — include the California Teleconnect Fund and federal E-Rate programs for libraries, K-12 schools and colleges.<sup>24</sup> Public safety answering points and other government agencies may have broadband connections through FirstNet and/or Next Generation 911.

CCTA encourages California policy makers to ensure that anchor institutions statewide utilize all currently available funding sources to help pay monthly charges for service and not seek to divert funds the Legislature authorized for middle-mile infrastructure.

- *Question 4 (continued): Should the middle-mile network directly provide broadband Internet access service, voice service, etc.?*

As described above, SB 156 authorizes \$3.25 billion for the Middle-Mile Network broadband infrastructure, not the provision of last-mile service or infrastructure.<sup>25</sup> The statute specifically refers to the Middle-Mile Network providing an opportunity for last-mile providers to interconnect<sup>26</sup> and Middle-Mile Network locations “that enable last-mile connections.”<sup>27</sup> Indeed, SB 156 does not authorize or require the TPA – which will operate the Middle-Mile Network – to offer voice or broadband services directly to end-users.

- *Question 4 (continued): The Commission’s 72-hour backup power requirements apply to all facilities-based wireline and wireless communications service providers that provide service in Tier 2 and Tier 3 High Fire Threat Districts. Should the Commission consider additional requirements?*

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<sup>24</sup> It is CCTA’s understanding that CENIC currently assists eligible anchor institutions to utilize these programs that help pay monthly service costs.

<sup>25</sup> Separate from the \$3.25 billion for the Middle-Mile Network, the state budget authorized other funding for last-mile infrastructure, including \$2 billion for the California Advanced Services Fund (“CASF”) program and \$750 million for a loan loss reserve program.

<sup>26</sup> Section 11549.52(a).

<sup>27</sup> Section 11549.54(d).

As discussed above, CCTA recommends that the Commission, in providing the staff report to the Office, adhere to the prioritization requirements for identifying potential Middle-Mile Network locations that the Legislature adopted in SB 156. Any “additional requirements” such as backup power are not within the scope of the staff report the Commission is required to provide to the Office.

**E. Question 5: Last-Mile Providers**

- *Question 5: How can the middle-mile network enable last mile connections in unserved, underserved and served areas of the state?*

SB 156 requires the Commission to provide the Office a staff report identifying potential locations for Middle-Mile Network deployment and to “prioritize locations that enable last-mile connections to residences **unserved** by 25 mbps downstream and 3 mbps upstream.”<sup>28</sup> Many unserved locations consistent with this requirements already have been identified in comments previously submitted.<sup>29</sup> Once the Commission submits its staff report, the Office and TPA will exercise their authority to decide where to build or lease facilities for the Middle-Mile Network that will enable last-mile connections. The Commission, on the other hand, can use the CASF program, including the new Federal Funding Account, to fund last-mile projects in unserved communities, which could use the Middle-Mile Network, if needed.

- *Question 5 (continued): How can the middle mile network assist the operation and development of public broadband networks? Are there opportunities to aggregate network monitoring, provide a managed voice service, security services, call center, and other back-office services among public networks?*

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<sup>28</sup> Section 11549.54(d) (emphasis added).

<sup>29</sup> Reply Comments of CCTA (September 21, 2021) at 2 to 4.

Competitive neutrality and nondiscrimination are fundamental to an open access network. California's new Middle-Mile Network, by definition, will be open access and available to all ISPs. SB 156 defines open access as "equal non-discriminatory access to eligible entities on a technology and competitively neutral basis, regardless of whether the entity is *privately or publicly owned*."<sup>30</sup> This means that the Middle-Mile Network cannot be designed or operated in a way that "assists" any particular type of provider. That includes making services available that would be designed to meet the unique needs of certain types of providers over those of others. Consistent with SB 156, the Office and the TPA will be developing a Middle-Mile Network that makes services available on a technology-neutral and competitively-neutral basis so that last-mile providers can connect those residences that currently do not have 25/3 service.

Moreover, to the extent the provision of voice and other services listed in the question are last-mile services, SB 156 does not authorize use of the \$3.25 billion for provision of last-mile service, as discussed above.

#### **F. Question 6: Other States**

- *Question 6: Numerous other states operate open-access networks, including but not limited to Illinois, Kentucky, Massachusetts, Michigan, Missouri, North Carolina, Ohio, Virginia, and Washington.*
- *Are there any successes or pitfalls the State of California should take into consideration from other statewide open-access networks or even from other countries?*

SB 156 requires the Commission to adhere to certain requirements for recommending potential Middle-Mile Network locations in a staff report to the Office. Lessons learned from the successes and pitfalls found in other publicly funded open access middle-mile projects may

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<sup>30</sup> Section 11549.50(e) (emphasis added).

inform the staff report and, even more significantly, should inform the ultimate decisions by the Office and TPA of where to deploy the Middle-Mile Network.

As an initial matter, California can first look to other open access middle-mile projects within the state to glean key lessons. For example, the letter to the Commission terminating the proposed Digital 299 open access middle-mile project between Redding and Eureka describes many unexpected challenges, delays and cost overruns,<sup>31</sup> even after receiving a \$47 million CASF grant,<sup>32</sup> a decade of planning and support from the Redwood Coast Connect Broadband Consortia,<sup>33</sup> and significant support from the Commission, Legislature and community institutions.<sup>34</sup> One key lesson appears to be that, even with the best of intentions, planning and support, these middle-mile projects in remote rural areas that remain unserved are more costly and challenging than expected. There may be other lessons to be learned from Digital 299, such as whether, and to what extent, the proposed network route contributed to the project being terminated.

Previous comments in this proceeding further describe the high cost, delays, and unexpected challenges with other open access middle-mile projects seeking to connect unserved communities in California.<sup>35</sup>

Of the nine states referenced in Question 6, two have state-operated open access middle-mile networks comparable to what SB 156 authorizes, and each have important lessons to glean:

- **Kentucky:** Kentucky Wired is a 3,200-mile middle-mile network built by the state as a public-private partnership with Macquarie Capital.<sup>36</sup> It was expected to be complete in

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<sup>31</sup> Letter from Inyo Networks to Commission (September 17, 2020), included with these comments as Attachment A. *See also* Comments of CCTA (September 21, 2021) at 6, footnote 19.

<sup>32</sup> Resolution T-17548 (March 24, 2017), available at [182417667.PDF \(ca.gov\)](#).

<sup>33</sup> <https://www.times-standard.com/2019/07/26/digital-299-broadband-project-expected-to-be-completed-in-2021>.

<sup>34</sup> Resolution T-17548 at 11 to 13.

<sup>35</sup> Reply Comments of CCTA (September 21, 2021) at 5 to 7.

<sup>36</sup> “About, Kentucky Wired,” <https://kentuckywired.ky.gov/about/Pages/default.aspx>.

2018, but there were significant delays and cost overruns.<sup>37</sup> KentuckyWired underestimated how long it would take to reach agreements for access to poles.<sup>38</sup> The network has not announced any partnership with ISPs to provide last-mile service.<sup>39</sup>

- *Key Takeaway:* It is reasonable to expect significant delays and cost-overruns when deploying to critical unserved communities, and the Office and TPA should budget and prioritize deployment accordingly.
- **Massachusetts:** Massachusetts Broadband Institute (MBI) is the state entity that owns and operates the middle mile MassBroadband123 fiber network.<sup>40</sup> It is a 1,200-mile middle-mile fiber network developed to connect government buildings and anchor institutions, as well as bolster last-mile connectivity through government-owned networks in western Massachusetts. There has been recent coverage and reliability problems with the middle mile network. In April 2021, more than a dozen towns wrote a letter calling on MBI to improve the Mass Broadband 123 to make it less likely to experience disruptions and town-wide failures.<sup>41</sup> KCST, the company that operates Mass Broadband 123, filed for Chapter 11 bankruptcy in 2017 claiming the network cannot be sustainably operated as constructed.<sup>42</sup>
  - *Key Takeaway:* It is critical that the Office and TPA consider the costs of ensuring that the network is reliable and the significant maintenance costs prior to deployment.

For the majority of the states referenced in Question 6, *there is no actual state-operated open access middle-mile network*, and therefore it is difficult to draw applicable lessons for

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<sup>37</sup> “Kentucky Wired project being put under state microscope,” Kentucky Today, April 30, 2018, <https://www.kentuckytoday.com/stories/kentucky-wired-project-being-put-under-state-microscope.13091>; “Audit Finds Fault with KentuckyWired Internet Project, Government Technology,” September 28, 2018, <https://www.govtech.com/budget-finance/audit-finds-fault-with-kentuckywired-internet-project.html>; “The Hitch in Kentucky’s Plan to Build High-Speed Internet for All,” Bloomberg, February 1, 2018, <https://www.bloomberg.com/news/articles/2018-02-01/the-hitch-in-kentucky-s-plan-to-build-high-speed-internet-for-all>.

<sup>38</sup> “The Hitch in Kentucky’s Plan to Build High-Speed Internet for All,” Bloomberg, February 1, 2018, <https://www.bloomberg.com/news/articles/2018-02-01/the-hitch-in-kentucky-s-plan-to-build-high-speed-internet-for-all>.

<sup>39</sup> “After years of delays, KentuckyWired project is finally finished. Now what?,” March 19, 2021, [https://www.wlky.com/article/project-brings-3200-miles-of-fiber-optic-cable-across-ky-what-it-means-for-your-internet-at-home/35866733#\\_gl=1\\_1wky.com](https://www.wlky.com/article/project-brings-3200-miles-of-fiber-optic-cable-across-ky-what-it-means-for-your-internet-at-home/35866733#_gl=1_1wky.com)

<sup>40</sup> “MassBroadband 123 Network Construction,” MBI, <https://broadband.masstech.org/about-mbi/past-programs/massbroadband-123-network-construction>

<sup>41</sup> Towns ask state to improve reliability of ‘middle mile’ internet network, Berkshire Eagle, April 20, 2021, com [https://www.berkshireeagle.com/news/local/towns-ask-state-to-improve-reliability-of-middle-mile-internet-network/article\\_fb01able-a222-11eb-b47d-73d77b96c849.html](https://www.berkshireeagle.com/news/local/towns-ask-state-to-improve-reliability-of-middle-mile-internet-network/article_fb01able-a222-11eb-b47d-73d77b96c849.html).

<sup>42</sup> [https://www.masslive.com/news/2017/03/massbroadband\\_123\\_operator\\_fil.html](https://www.masslive.com/news/2017/03/massbroadband_123_operator_fil.html)



California’s Middle-Mile Network. For example, one of the purportedly open access networks cited as examples from other states – Washington’s NoaNet – is a middle-mile network that originated with public utility districts and is subsidized by rates from utility services such as water and electricity.<sup>43</sup> Similarly, another network referenced — Virginia Telecommunication Initiative — is a pilot program to allow electric utility companies to build middle-mile networks and lease fiber to broadband providers.<sup>44</sup> Missouri also has no state operated middle-mile network. In addition, three of the examples cited – Michigan,<sup>45</sup> North Carolina,<sup>46</sup> and Ohio<sup>47</sup> – are non-profit networks that connect public schools and universities, similar to California’s CENIC network that connects K-12 schools, colleges, universities and libraries statewide. Illinois has a state-operated middle-mile network, Illinois Century Network, but the network primarily serves research, governmental, and healthcare organizations.<sup>48</sup> These examples are substantially different from what SB 156 requires for California’s Middle-Mile Network, and the Commission should avoid drawing inapt comparisons.

Overall, a key lesson is that deploying Middle-Mile Networks, especially in the remote rural locations required by the “worst first” strategy, will be more costly and challenging than expected. Accordingly, CCTA urges caution against trying to deploy the Middle-Mile Network

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<sup>43</sup> “Board and Members: High-Speed Broadband Technology Products: WA State Broadband Solutions.” <https://www.noanet.net/about/board-and-members/>

<sup>44</sup> “Utility Broadband Program,” CommonWealth Connect <https://www.commonwealthconnect.virginia.gov/utility-broadband>

<sup>45</sup> “ABOUT MERIT.” Merit, <https://www.merit.edu/about/>.

<sup>46</sup> “Home Page.” MCNC, <https://www.mcnc.org/>.

<sup>47</sup> “OARnet History.” OARnet, 6 May 2021, <https://www.oar.net/about/history>.

<sup>48</sup> <https://www2.illinois.gov/icn/about/network/Pages/default.aspx>

to so many locations that available funds would be stretched too thin to achieve the intent of SB 156.<sup>49</sup>

**G. Question 7: Other Issues Not Covered**

- *Question 7: Are there any issues the State of California should take into consideration as it develops the statewide middle mile network?*

CCTA looks forward to ongoing engagement with the Office, the TPA, CDT and the Middle-Mile Advisory Board as the Office and TPA move forward with their statutory duties to develop, construct, maintain, and operate the Middle-Mile Network.

By way of example, as an operational matter, the Office and the TPA should consider operating the Middle-Mile Network to meet certain standards, including resiliency, backup power, outage reporting, facilities inspection, and related requirements. This approach would ensure that the Middle-Mile Network (i) remains competitively neutral for all ISPs; (ii) garners the interest of as many ISPs as possible; and (ii) offers public safety standards equivalent to what other ISPs have implemented.

**III. CONCLUSION**

CCTA appreciates the opportunity to respond to the Ruling and looks forward to review of other parties' comments. CCTA urges the Commission to provide the Office a staff report that will advance the legislative intent of ensuring that California's historic \$6 billion broadband

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<sup>49</sup> Reply Comments of CCTA (September 21, 2021) at 7.

investment follows the “worst first” strategy codified in SB 156 to prioritize deployment that enables last-mile connectivity in areas of the state that have no service or very slow service.

Respectfully submitted,

/S/ JACQUELINE R. KINNEY

JACQUELINE R. KINNEY  
CALIFORNIA CABLE & TELECOMMUNICATIONS  
ASSOCIATION  
925 L STREET, SUITE 850  
SACRAMENTO, CA. 95814  
TEL: 916/701-5580  
FAX: 916/446-1605  
EMAIL: [jkinney@calcable.org](mailto:jkinney@calcable.org)

Dated: October 1, 2021

ATTACHMENT A



September 17, 2020

Via email

Robert Osborn  
Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RE: Termination of Digital 299 Broadband Project, granted in Resolution T-17548  
and a Further Request for Additional Funds filed November 12, 2019

Dear Mr. Osborn:

On March 23, 2017, the California Public Utilities Commission (CPUC) awarded Inyo Networks, Inc. (Inyo) a grant for the Digital 299 Middle Mile and Last Mile Broadband Project (Digital 299) through Resolution No. T-17548. Inyo sought this grant at the request of the Redwood Coast Connect Broadband Consortium which had designated the route as their region's highest priority in an attempt to reach 98% of households in the consortium's region, a goal AB1665 gave to the CPUC to achieve. As set forth in great detail in our pending November 12, 2019 Request for Additional Funds filed with the Communications Division Director, due to unexpected circumstances beyond the grantee's control including route changes requested by a state agency and increases in costs and labor, Inyo notified the Commission that the Digital 299 project had increased substantially in cost. Inyo requested the "rightsizing" of the CASF funds for the project, citing past Commission precedent supporting funding of exogenous costs. In the Request for Additional Funds, Inyo requested an additional amount of \$40,343,067 (69.6%) from CASF and committed itself to provide a match of \$38,022,758, an increase of \$15,098,226 from the original budget.

Today with a heavy heart, Inyo is notifying the Commission of its immediate intent to terminate the Digital 299 project due to lack of funds for the project as described in Inyo's November 12, 2019 Request for Additional Funds. One factor is that the Commission has taken no action on the pending Request for Additional Funds and Inyo can no longer sustain the project without any CASF funds granted to date. Second, Inyo's new match of over \$38 million for the current project has proven to be too heavy of a lift.

Inyo applied for a USDA ReConnect grant/loan of \$38,022,758 but there has not been any feedback from USDA to date and, frankly, the USDA application had proposed service areas for

the project that were very chopped up due to USDA program rules that allow only unserved areas. Inyo does not feel confident that this USDA ReConnect loan will be granted.

Inyo had secured its match for the initial grant. However, given the additional request, Inyo had to search for significant new funding for its new higher match. Inyo initially had lined up a significant IRU lease for dark fiber to help fund this significant match but the firm deadline the project needed to meet has now passed. The lack of Commission approval on the Request Additional Fund by May 2020 has caused the company to decline to proceed further with the proposed IRU contract. Given Inyo has spent nearly \$3.4 million of its own funds to date, Inyo cannot afford to continue the project, with no certainty of funding for the additional amount or its own additional match requirement.

**No CASF funds have been withdrawn for the Digital 299 project to date.** Due to its good faith effort to bring this project to completion and due to circumstances beyond Inyo's control that resulted in exogenous costs as described in detail in its November 12, 2019 Request for Additional Funds and herein, Inyo respectfully requests \$2,357,196 in CASF funding which it has expended to date, representing 69.4% of the \$3,386,776 in costs to date. Inyo will absorb the other 30.4% (\$1,029,580) of the costs.<sup>1</sup> Inyo recognizes that the current CASF rules do not anticipate this situation<sup>2</sup> and does not provide a clear procedural path for recoupment of good faith expenditures on a CASF project. Inyo respectfully requests that the Commission to allow this one-time reimbursement under these very unique circumstances. This situation will bring substantial funds back into the CASF account, and this will allow other worthy CASF projects to go forward, including other projects that Inyo is pursuing.

### **CASF Approved Budget**

In the original pre-AB 1665 grant in T-17548, funding in the amount of \$46,709,036 from the California Advanced Services Fund (CASF) Infrastructure Fund was approved. The CASF grant constitutes 69.6 percent of the initial total project cost of \$69,633,568.<sup>3</sup> Applicant Inyo Networks was to provide 30.4 percent or \$22,924,532 of the total project cost. The middle-mile project portion (which constitutes the vast majority of the project) was funded at the 70% level, and the small Lewiston last mile portion of the project is funded at the 60% level. Funds for the project were to be made available upon the completion of CEQA, as typical for CASF-funded projects.

In detail in Inyo's November 12<sup>th</sup> request which we incorporate by reference, Inyo related a number of changed conditions which were outside its control, including a request by Caltrans to not place part of the D299 path on State Route 299 which caused an move of part of the

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<sup>1</sup> The D299 grant had a match ration of 69.6% CASF grant – 30.4% Applicant; this maintains that match.

<sup>2</sup> Section 16 of the CASF rules do not have provisions for potential reimbursement where an applicant has expended its own funds in good faith but received no CASF funds and is terminating the project for circumstances beyond its control.

<sup>3</sup> Resolution T-17548, at p. 3. Portions of the project were disallowed in some areas of Cottonwood to Redding, and Weaverville, due to challenges, resulting in an eligible budget of \$67,073,674.

backbone onto unimproved USFS and logging roads through portions of the Shasta-Trinity and the Six Rivers National Forests. This new path added 14.2 additional miles of backbone on unimproved roads (as opposed to a highway). This change caused increases in materials, labor and construction costs. Inyo issued two sets of Solicitations (Request for Proposals) to obtain realistic and up-to-date bids.

### **Inyo's Request for Out-of-Pocket Expenses to Date**

As an indication of Inyo's commitment to date, Inyo invested \$3,386,776 in project development (pre-award and post-award). See Attachment A for the details as of August 21, 2020.<sup>4</sup> Consistent with CASF rules, Inyo has not received any CASF funds to date, and has funded every penny itself. The work on the project has been significant. Inyo accomplished these milestones to date.

Permits: Inyo substantially completed the environmental permitting process including project scoping, field surveys tribal consultation and agency consultation for CEQA and NEPA. Inyo had been preparing final reports, with targeted permit completion permits by close of January. To understand the complexity of this project, the environmental permitting process involved approximately 50 agencies.

Engineering: Inyo completed and mapped the end-to-end route design, including running line, anchor connections, and laterals. Land ownership and parcel information were inventoried. Inyo completed network design and pole line documentation of the Lewiston last mile network. Inyo completed working drawings with environmental mitigation measures incorporated.

Procurement: Inyo added a project procurement officer to our project management office for contract administration. Inyo issued Requests for Proposals for environmental consulting, electronics, nodes, cable, conduit, vaults, and underground construction (twice). These were used in budget validation.

Community Outreach: Inyo participated in various statewide broadband conferences to increase visibility of Digital 299, taking part in policy discussions and agency collaboration. Inyo also engaged in extensive local community outreach to schools, hospitals, tribal governments, and local agencies. Formal presentations at numerous conferences, economic development forums, and county/civic interest group events (California Broadband Council (CBC), California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), etc. Digital 299 has a very high profile both statewide. At a federal level, Inyo met with senior staff in the US Department of Agriculture, Federal Communications Commission, and the Department of Commerce and various elected officials, thus establishing a high profile at the national level, as well.

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<sup>4</sup> Attachment A is a Construction in Progress Account through July 22, 2020. Categories include Payroll Allocations, Subcontractors and Equipment, Permits and Applications, Legal Fees, Grant Development, Travel Costs, and Project Management/Market Analysis/Other.



Economic Development: Inyo worked with California Center for Rural Policy, RRDEC, Rural County Representatives of California (RCRC) and others. Inyo teamed up with the Humboldt Bay Harbor District (Harbor District) to transform legacy assets through broadband availability. In addition to raising broadband awareness in the area, these efforts will help the region, and the state, to remain competitive in the global information economy.

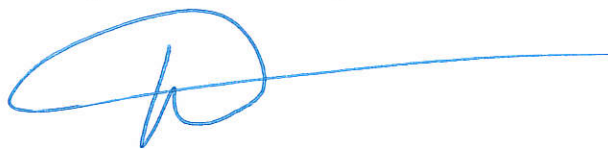
Pre-Sales and Matching Funds: Inyo reached out on a nationwide basis to a broad set of public and private sources to close funding gap. In addition to some level of success in capital markets, we have brought international players to the table to acquire dark fiber on the route. We continue meeting with state and federal agencies on relevant safety, economic development and disaster recovery programs. In April, encouraged to do so by a number of local, state and federal stakeholders, Inyo applied for federal funds under the USDA ReConnect Broadband Program, which included \$25,000,000 in grants funds and \$38,022,758 in loans. This application required the project to be sub-divided into over 39 discrete, discontinuous projects to meet the application structure of the USDA's program.

### **Timing Considerations**

In its November 12<sup>th</sup> request, Inyo stated that project construction will take thirty (30) months once shovels are in the ground, leading to several years before network completion. Inyo requested that the Commission decide on this request for additional CASF funds by May 2020. It is now August 2020, and there is no indication that an approval will be forthcoming for the full amount of the additional request. Given the delay, Inyo has lost a key contract for an IRU for dark fiber that would have helped fund its additional match. At this point, Inyo feels it has no choice but to withdraw from the project and seek out of pocket costs that it expended in good faith in reliance on the initial grant.

Inyo makes clear that it is disappointed, because it strongly believes in the many benefits the Digital 299 project will bring to the State's commitment to close the Digital Divide and ensure that a secure, reliable communications infrastructure is deployed to one the most vulnerable parts of the state. With the wildfire threat increasing, this project would also have played a key role in advanced communications to assist in prevention, communications during a disaster, and recovery scenarios. The benefits of a successful Digital 299 is not inconsequential. We look forward to discussing this request with Communications Division leaders.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'N' followed by a horizontal line extending to the right.

Nicholas Keeler  
President, Inyo Networks, Inc.

cc: Michael Minkus  
Louise Fischer  
President Marybel Batjer  
Commissioner Martha Guzman Aceves  
Commissioner Clifford Rechtschaffen  
Commissioner Liane Randolph  
Commissioner Genevieve Shiroma

Attachment A